

05/12/06

THE STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION
INVESTIGATION INTO UTILITY POLES
DOCKET NO. DM 05-172
COMMISSION STAFF'S TOPIC 3 DATA REQUEST 04/20/06

NOW COMES, The City of Concord ("City"), a municipal corporation duly chartered by the State of New Hampshire with a usual place of business at 41 Green Street, Concord, New Hampshire, and provides the following responses to the Public Utilities Commission's Data Request of April 20, 2006:

Request No. Staff – Licensing 4-4

Electricity, Verizon, municipalities & NHDOT: If a municipality or the State of New Hampshire Department of Transportation seeks to attach to utility poles and/or occupy conduit space in order to build an intra-governmental network for government use only, are they required to execute a Pole Attachment or Conduit Occupancy Agreement with the owner or joint owners of the poles and conduit, apply for a license, and pay all appropriate fees including engineering surveys, make ready costs and prevailing pole attachment and/or conduit occupancy fees? Please explain your answer fully and provide the basis for your rationale, including a citation to the rule, tariff, ordinance or statute that supports your assertion.

Response:

The City of Concord has for the last century reserved and exercised its rights on poles erected in the City right of way for its wires, without payment of any fees, to provide municipal services as described in the following attached documents:

On February 10, 1903, an agreement was signed by New England Telephone and Telegraph granting to the City of Concord "the accommodation of telephone and signal wires belonging to the City and used exclusively for municipal services, at the top of each of its poles now or hereafter erected in said City...";

On April 13, 1903, a Resolution was passed by the City creating a Board for locating poles and wires;

On May 10, 1926, an agreement was executed between Concord Electric Company and the City of Concord; and

On October 18, 1926, an agreement was executed between New England Telephone and Telegraph and the City of Concord.

These agreements specifically reserved space on its poles for telephone, fire alarms, and police signal wires owned by the City and used exclusively for municipal purposes. Said agreements were granted and subject to the provisions applicable and thereto contained in the public statutes and the ordinances of the City. To date, there have been no further actions by the City's governing authority to change those provisions.

The City of Concord has continued to erect and maintain fire alarm and communication equipment for municipal purposes within the space reserved for its use. The City does not apply for permission or permit to use this space, nor pay any applicable fees since the inception of the agreement.

The City is planning further deployment of an intra-governmental network utilizing the existing space reserved for municipal use. The City is unaware of any requirements to license such equipment, pay fee for the right to use this space or notify any utility thereof and accordingly, has not.

In an effort to maintain the City's rights under the historic agreement, we are currently reviewing with the Local Government Center and electric utilities options for a standard pole licensing agreement that outlines provisions for the placement of municipal wires on all poles and in all conduits placed in its right of ways. A working draft of this document was discussed at the most recent meeting of this group on April 18, 2006.

The statutory context for municipal use of space on poles is primarily RSA Chapter 231.

**Person Responsible: Paul F. Cavanaugh, City Solicitor
Edward Roberge, City Engineer**

Date: May 12, 2006

Request No. Staff – Licensing 4-5

Electricity, Verizon, municipalities & NHDOT: If a municipality or the State of New Hampshire Department of Transportation seeks to attach to utility poles and/or occupy conduit space in order to offer competitive services for use by the general public, are they required to execute a Pole Attachment or Conduit Occupancy Agreement with the owner or joint owners of the poles and conduit, apply for a license, and pay all appropriate fees including engineering surveys, make ready costs and prevailing pole attachment and/or conduit occupancy fees? Please explain your answer fully and provide the basis for your rationale, including a citation to the rule, tariff, ordinance or statute that supports your assertion.

Response:

This request does not apply to the City of Concord as the City is not in the business of providing competitive services for use by the general public.

Person Responsible: Paul F. Cavanaugh, City Solicitor

Date: May 12, 2006

Request No. Staff – Licensing 4-6

Electrics, Verizon, municipalities & NHDOT: Please provide procedures and actual practices for municipalities' or their subcontractors' placement, replacement, maintenance and repair of municipal communication equipment in reserved space on the poles.

Response:

The City of Concord Fire Department installs and maintains fire alarm and municipal communication equipment within the space reserved on utility poles as allowed under the pole attachment agreement. The City follows the protocol of the IMSA Official Fire Alarm Manual, IMSA Municipal Fire Alarm Certification, National Electrical Safety Code, National Electrical Code, OSHA, AT&T Manual on Construction Methods, Bellcore Bluebook Manual for Construction Procedures, Society of Telecommunications Engineers Recommended Practices for Optical Fiber Construction and Testing, and also provides insurance as required for the placement, replacement, maintenance and repair of municipal communication equipment on the poles. All contracts for municipal communication equipment let out by the City contain these controlling provisions.

**Person Responsible: Rick Wollert, Acting Fire Alarm Superintendent
Douglas Ross, Purchasing Dept. (for bid work)**

Date: May 12, 2006

Request No. Staff – Licensing 4-16

Municipals: Are you aware of any unlicensed utility poles in your jurisdictions? If so, please provide an approximate number by town to the extent you are able.

Response:

The actual number of licensed or unlicensed poles within the City of Concord is difficult to determine given that inventory records are vague and the utilities have not provided specific utility pole inventories of structures and licenses in place within the City of Concord. As noted earlier, the City has historic license records dating back to the early 1900's. The City of Concord intends to research the records and inventory all utility poles in an effort to make that final determination. While this is a cumbersome task, Concord is committed to determining the pole and license inventory.

The City is aware of a number of unlicensed poles known as "double poles" located throughout the City. These are poles that are in the process of being relocated, replaced or removed by the utilities yet are incomplete. In most cases, all utilities have been removed by the utility companies with the exception of the Verizon equipment. Verizon has been notified of this matter but has yet to complete its efforts.

Additionally, the City is aware of unlicensed poles inasmuch as a number of recent license requests from both electric and telephone utilities have been withheld from approval pending the final Pole License Agreement under consideration by Local Government Center. The City continues to evaluate and physically inspect the requested pole locations as if it were executing the license document.

**Person Responsible: Rick Wollert, Acting Fire Alarm Superintendent
Edward Roberge, City Engineer
Engineering Services Division**

Date: May 12, 2006

Request No. Staff – Licensing 4-17

Municipals: Do you perceive unlicensed poles as a problem in your jurisdictions? If so, please explain why.

Response:

Unlicensed utility poles within the City's right-of-ways present a number of problems that the City of Concord is concerned with.

First, Verizon often installs poles without final licensure approval and at times even prior to application for license. The pole licensing process provides the municipality with review and approval powers on the poles final location. In a number of instances, utility poles have been installed where sight distance or unsafe setbacks to travel ways were created or within or adjacent to sidewalks causing problems with winter maintenance. Advance notification allows for the City to review, inspect, and approve pole locations in an effort to avoid further relocation.

Additionally, there is a considerable liability issue on unlicensed utility poles. Under state statutes, local Cities and Towns are protected by liability for any injury that may result from the location, construction, or maintenance of licensed utilities. Every effort should be made to license such structures within the City's right-of-way.

**Person Responsible: Paul Cavanaugh, City Solicitor
Edward Roberge, City Engineer**

Date: May 12, 2006

Pubic Work Projects

Request No. Staff – 4-20

Municipals: Do you follow the New Hampshire Department of Transportation's *Utility Relocation Process – Scheduling Guidelines* (see Attachment NHDOT Utility Relocation Process (Scheduling Guidelines) to Verizon NH's response to Staff 1-37) on the administration of public works projects when undertaking a public works project in your municipality? If not, why not? Please provide a copy of the administrative guidelines that you follow.

Response:

While the City of Concord is not familiar with the NHDOT's Utility Relocation Process – Scheduling Guidelines, we do follow specific guidelines in the advance notification and planning of major public works projects.

The City sponsors an annual utility coordination meeting where the 6-year Capital Improvement Program (CIP) is reviewed in detail with the utility companies in attendance. All utility companies including Unitil-Concord Electric, Verizon, Comcast Cable, Keyspan Energy, and Concord Steam, as well as related development interests and business groups are invited. The purpose of this meeting is to outline any utility relocation requirements for upcoming projects as well as coordinating work schedules for both City and private utility interests.

The City also coordinates a monthly development plan review meeting where proposed private development projects are reviewed with the referenced utilities.

Additionally, the Engineering Services Division requires utility coordination on all major capital improvement projects and private development projects in the City. Utility coordination is a requirement of the Planning Board's review process for approval. The City's CIP Program includes relocation planning efforts during the design phase of all projects.

Our concern is that with all of the above efforts, utility pole relocation and the removal of "double poles" by Verizon is still not done in a timely fashion. Recent major projects have incurred considerable delays given the lack of timely response in the removal of utility poles. Efforts to comport with planned project construction schedules on the utility's part is needed.

**Person Responsible: Edward Roberge, City Engineer
Paul Cavanaugh, City Solicitor**

Date: May 12, 2006

Request No. Staff – Licensing 4-21

Electrics, Verizon, municipalities & NHDOT: What do you recommend to improve municipal road project coordination?

Response:

Understanding the cost impacts associated with major infrastructure construction projects, the City of Concord recognizes the need to provide as much advance project planning notification to the utilities as possible.

Continued efforts to communicate directly with the utility companies as it relates to private and public infrastructure improvement projects are paramount to the timely and successful completion of projects.

These efforts demonstrate the City's commitment to improve municipal road project coordination.

The City agrees with Unitil in its response to Staff Data Request 2-8, recommending that one utility be in charge of all the poles and conduits and that the other utilities be financially accountable to the lead utility and pole owner, preferably one of the electric companies.

**Person Responsible: Paul Cavanaugh, City Solicitor
Edward Roberge, City Engineer**

Date: May 12, 2006

Request No. Staff – Licensing 4-24

Electricity, Verizon, municipalities & NHDOT: In the event that a public works project, either municipal or state, calls for utilities to temporarily relocate their facilities before moving them to their final location at a later date in the project, should the utilities be compensated for the temporary relocation work? If your answer is no, please explain why and provide the basis for your rationale, including a citation to any rule, tariff, ordinance or statute that supports your assertion.

Response:

The municipalities generally agree that the utilities should not be compensated for temporary relocation work due to public works projects. RSA Chapter 231 provides a process, including notice and a hearing, for temporary removal of the poles for any lawful purpose and relocation at the utility's expense for any public health, safety or convenience need. Additionally, pole owners include the cost of relocating poles and equipment due to public works projects in the pole attachment rates they charge others to attach to their poles and cannot charge them a separate fee for that, pursuant to FCC implementation of the Federal Pole Attachments Act. 47 U.S.C. § 224.

Citing RSA 231:177 Removal of Wires and Poles by the State or Town After Notice. – “Poles used by telephone, telegraph or other public utilities including railroads and street railways may be removed after 10 days' notice in writing of the intention to remove the same has been given by the commissioner of transportation or the highway agent of any city or town.” If the poles are not removed within the allowed time, the town can perform the work itself at the expense of the owner, RSA 231:181. It is well settled, even under this state's common law, that in the absence of express provisions to the contrary, utilities are required to relocate their facilities at their own expense whenever that relocation becomes necessary for public health, safety or convenience. *Opinion of the Justices*, 101 NH 527 (1957), a copy of this opinion is attached.

To the extent that relocation becomes necessary for public health, safety or convenience, utilities are required to relocate their facilities at their own expense. For a detailed outline, see “A Hard Road to Travel”, 2004 Edition, prepared by the Local Government Center, Chapter 13, pages 194-196.

Person Responsible: Paul Cavanaugh, City Solicitor
Edward Roberge, City Engineer

Date: May 12, 2006

Respectfully submitted,
CITY OF CONCORD

Dated: 05/12/06

By: /s/ Paul F. Cavanaugh
Paul F. Cavanaugh, City Solicitor
41 Green Street
Concord, New Hampshire 03301
603-225-8505

DM 05-172

Certificate of Service

I hereby certify that on this 12th day of May, 2006, the foregoing responses were sent by first class, U.S. mail and/or hand delivered to the following parties to this action:

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/s/ Paul F. Cavanaugh
Paul F. Cavanaugh, City Solicitor